

INVESTMENT TREATY WITH EGYPT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE ARAB REPUBLIC OF EGYPT CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS, SIGNED AT WASHINGTON SEPTEMBER 29, 1982; WITH A RELATED EXCHANGE OF LETTERS SIGNED MARCH 11, 1985; AND A SUPPLEMENTARY PROTOCOL SIGNED MARCH 11, 1986



JUNE 2, 1986.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, June 2, 1986.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Arab Republic of Egypt concerning the Reciprocal Encouragement and Protection of Investments, signed at Washington September 29, 1982; with a related exchange of letters signed March 11, 1985; and a supplementary protocol signed March 11, 1986. I transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

The Bilateral Investment Treaty (BIT) program, initiated in 1981, is designed to encourage and protect U.S. investment in developing countries. The treaty is an integral part of U.S. efforts to encourage Egypt and other governments to adopt macroeconomic and structural policies that will promote economic growth. It is also fully consistent with U.S. policy toward international investment. That policy holds that an open international investment system in which participants respond to market forces provides the best and most efficient mechanism to promote global economic development. A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the parties also agree to international law standards for expropriation and compensation; free financial transfers; and procedures, including international arbitration, for the settlement of investment disputes.

I recommend that the Senate consider this treaty as soon as possible, and give its advice and consent to ratification of the treaty, with related exchange of letters and supplementary protocol, at an early date.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 20, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States of America and the Arab Republic of Egypt concerning the Reciprocal Encouragement and Protection of Investments, signed at Washington, September 29, 1982; with a related exchange of letters signed March 11, 1985; and a supplementary protocol signed March 11, 1986. I recommend that the treaty, with related exchange of letters and supplementary protocol, be transmitted to the Senate for its advice and consent to ratification.

In accordance with the terms of the supplementary protocol, revisions made to the treaty and contained in that supplementary protocol will be integrated into a single unified text which will be published as the official treaty text after entry into force. For the information of the Senate, a copy of that consolidated text is attached to this report to facilitate reviewing the treaty. The consolidated text should be considered an unofficial text prior to ratification of the treaty, with related documents, by both Parties. As used herein, references to the treaty with Egypt should be considered as references to the consolidated text, as amended.

The Bilateral Investment Treaty (BIT) with Egypt was the first treaty signed under the BIT program which you initiated in 1981. Shortly after the signing, the Egyptian Government indicated a need to renegotiate a number of the treaty's provisions. The Parties agreed to certain changes, now contained in the supplementary protocol. In particular, the supplementary protocol replaces entirely the original protocol of September 29, 1982. Accordingly, the Department considers the first protocol to be an unperfected instrument which should not be submitted to the Senate for advice and consent to ratification.

Development of the BIT program and the negotiation of the individual treaties have been pursued by the Office of the United States Trade Representative and the Department of State with the active participation of the Departments of Commerce and Treasury, in conjunction with other interested U.S. Government agencies. On March 25 this year, BITs with six countries—Haiti, Morocco, Panama, Senegal, Turkey, and Zaire—were submitted to the Senate for its advice and consent to ratification. Additional BITs, with Bangladesh, Cameroon, and Grenada have also been signed and are being prepared for submission to the Senate.

In 1981 you initiated the global BIT program to encourage and protect U.S. investment in developing countries. By providing certain mutual guarantees and protections, a BIT creates a more stable and predictable legal framework for foreign investors in the territory of each of the treaty Parties. The negotiation of a series of bilateral treaties with interested countries establishes greater international discipline in the investment area.

The BITs which have been signed, as well as others under negotiation, are an integral part of U.S. efforts to encourage other governments to adopt macroeconomic and structural policies that will promote economic growth. They are also fully consistent with your policy statement on international investment of September 9, 1983, which states that international direct investment flows should be determined by private market forces and should receive fair, equitable and non-discriminatory treatment.

Our experience to date has shown that interested countries are willing to provide U.S. investors with significant investment guarantees and assurances as a way of inducing additional foreign investment. It is U.S. policy to advise potential treaty partners that conclusion of a BIT with the United States is an important and favorable factor in the investment relationship, but does not in and of itself result in immediate increases in U.S. investment flows.

Congressional support for the BIT program is reflected in Section 601(a) and (b) of the Foreign Assistance Act, as amended, in particular at Section 601(b) which provides:

In order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this Act, the President shall . . . (3) accelerate a program of negotiating treaties for commerce and trade, including tax treaties, which shall include provisions to encourage and facilitate the flow of private investment to, and its equitable investment in, friendly countries and areas participating in programs under this Act.

BITs are consistent in purpose with the network of treaties of Friendship, Commerce and Navigation (FCNs) which the United States negotiated from the early years of the Republic until the last successful negotiations with Thailand and Togo in the late 1960s. They continue the U.S. policy of securing by agreement standards of equitable treatment and protection of U.S. citizens carrying on business abroad and institutionalizing processes for the settlement of disputes between investors and host countries and between governments. We expect that a series of bilateral treaties with interested countries will establish greater international discipline in the investment area.

The BIT was designed to protect investment not only by treaty but also by reinforcing traditional international legal principles and practice regarding foreign direct private investment. In pursuit of this objective, the model BIT adopts FCN language and concepts. Traditional FCN provisions granting rights which are not important to the typical U.S. investor were eliminated and replaced with more specific language concerning investment protection. Perhaps most significantly, the BIT goes beyond the traditional FCN to pro-

vide investor-host country arbitration in instances where an investment dispute arises.

The U.S. BIT approach followed similar programs that had been undertaken with considerable success by a number of European countries, including the Federal Republic of Germany and the United Kingdom, since the early 1960s. Indeed, our industrialized partners already have nearly two hundred BITs in force, primarily with developing countries. U.S. treaties, which draw upon language used in the U.S. FCN treaties as well as European counterparts, are more comprehensive and far-reaching than European BITs.

THE U.S.-EGYPT TREATY

The treaty with Egypt was negotiated by an inter-agency team led by officials from the Office of the United States Trade Representative and the Department of State. The treaty satisfies all four main BIT objectives:

- foreign investors are to be accorded treatment in accordance with international law and are to be treated no less favorably than investors of the host country or no less favorably than investors of third countries, whichever is the most favorable treatment ("national" or "most-favored-nation" treatment), subject to certain specified exceptions;
- international law standards shall apply to the expropriation of investments and to the payment of compensation for expropriation;
- free transfers shall be afforded to funds associated with an investment into and out of the host country; and
- procedures are to be established which allow an investor to take a dispute with a Party directly to binding third-party arbitration.

The provisions on treatment of foreign investment and arbitration, and in particular Egypt's acceptance of international law as the governing law, mark an important achievement for the BIT program and U.S. investment and international arbitration policies.

A technical memorandum explaining in detail the provisions of this treaty will be transmitted separately to the Senate Committee on Foreign Relations. That technical memorandum explains, clause by clause, the provisions of the treaty with Egypt.

The treaty with Egypt was the result of the first BIT negotiation undertaken by the United States. Those negotiations were conducted from an early model text which in light of experience has undergone some modification. In general, however, the treaty closely follows the objectives contained in the current U.S. model text, the most significant provisions of which are as follows.

The model BIT's definition section clarifies terms such as "company of a Party" and "investment." The BIT concept of "investment" is broad and designed to be flexible; although numerous types of economic interests are enumerated, the intent is to include all legitimate interests in the territory of either Party, whether directly or indirectly controlled by nationals of the other Party, having economic value or "associated" with an investment. Protected companies of a Party are those incorporated or otherwise orga-

nized under the laws of that Party in which nationals of that party have a substantial interest.

The model BIT accords the better of national or most-favored-nation (MFN) treatment to foreign investment, subject to each Party's exceptions which are listed in a separate Annex. The exceptions are designed to protect state regulatory interests and for the United States to accommodate the derogations from national treatment in state or federal law relating to such areas as air transport, shipping, banking, telecommunications, energy and power production, insurance, and from national and MFN treatment in the case of ownership of real property. Any additional restrictions or limitations which a Party may adopt with respect to those matters or sectors excepted from the standards are not to affect existing investments. The model BIT also includes general treatment protections designed to be a guide to interpretation and application of the treaty. Thus, the Parties agree to accord investments "fair and equitable treatment" and "full protection and security" in no case "less than that required by international law." It specifically grants nationals of a Party the right to establish investments in the territory of the other Party, restricts the right to impose performance requirements, and obliges Parties to observe their contractual obligations with investors. The U.S. model also provides that companies legally constituted under the laws of the other Party (i.e., subsidiaries of companies of a Party) with investments in that country shall be permitted to engage "top managerial personnel of their choice, regardless of nationality."

The model BIT also confers protection from unlawful interference with property interests and assures compensation in accordance with international laws standards. It provides that any direct or indirect taking must be: for a public purpose; non-discriminatory; accompanied by the payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general standards of treatment discussed above. The meaning of "expropriation" as used in the model BIT is broad and flexible; it includes any measure which is "tantamount to expropriation or nationalization." Such compensation, which "shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known," must be "without delay," "fully realizable," "freely transferable" and "include interest at a commercially reasonable rate from the date of expropriation. . . ." The BIT grants the right to "prompt review" by the relevant judicial or administrative authorities in order to determine whether the compensation offered is consistent with these principles. It also extends national and MFN treatment to investors in cases of loss due to war or other civil disturbance. The BIT does not provide, however, a specific valuation method for compensating such losses.

The model BIT provides for free transfers "related to an investment," specifically of returns, compensation for expropriation, payments arising out of an investment dispute, contract payments, proceeds from sale, and contributions to capital for maintenance or development of an investment. Such transfers are to be made in a "freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in

the currency to be transferred." The model text recognizes that notwithstanding this guarantee Parties can maintain certain laws, regulations, or court-imposed obligations which could affect the disposition of investment assets. In particular, the model text provides that Parties can require reports of currency transfers and impose income taxes by such means as a withholding tax on dividends. The model text also recognizes that Parties retain the right to protect the rights of creditors and ensure the satisfaction of judgments in adjudicatory proceedings.

The model BIT provides that where certain defined investment disputes arise between a Party and a national or company of the other Party, including disputes as to the interpretation of an investment agreement, and the dispute cannot be solved through negotiation, it may be submitted to arbitration in accordance with any dispute-settlement procedures to which the national or company and the host country have previously agreed. Unless the national or company has submitted the dispute to previously agreed dispute settlement procedures or to adjudication by domestic courts or other tribunals of the host country, the national or company may submit the dispute to the International Centre for the Settlement of Investment Disputes ("ICSID") for conciliation or binding arbitration. Exhaustion of local remedies is not required. In a separate provision, the BIT Parties also agree to provide effective means of asserting claims and enforcing rights with respect to investments.

The model BIT provides for state-to-state arbitration between the Parties in case of a dispute regarding the interpretation or application of the treaty. In the absence of an agreement that other rules apply, the BIT refers the Parties to specific procedural rules which must govern the arbitration. The BIT also outlines the procedures for the creation of the arbitral panel.

The model BIT exhorts Parties to apply their tax policies fairly and equitably. Because the United States specifically addresses tax matters in tax treaties, the BIT generally excludes such matters. Another BIT provision exempts disputes arising under Export-Import Bank programs, or other credit guarantee or insurance arrangements providing for alternative dispute settlement arrangements, from the standard BIT arbitration clauses. The model BIT also states that the treaty shall not derogate from any obligations that require more favorable treatment of investments and declares that the treaty shall not preclude measures necessary for public order or essential security interests. The model BIT enters into force 30 days after exchange of ratifications and continues in force for at least ten years. Thereafter, either Party may terminate the treaty, subject to one year's written notice.

Each of these model provisions was developed after lengthy and extensive consultations within the U.S. Government and with the private sector. Nonetheless, in negotiating a particular treaty, the U.S. Government retains, of course, some flexibility to adopt modifications as necessary and in light of experience. While the U.S. model text has recently been simplified, the provisions summarized above have all been retained.

Some of the provisions of the U.S.-Egypt treaty differ from the current U.S. model text. With the exception of the transfers provi-

sions, none of the changes represent substantive departures from U.S. objectives. The more significant modifications are as follows:

(1) Definition of Investment (Article I): Although the treaty with Egypt, like the current model text, defines investment so as to include "every kind of asset, owned or controlled," paragraph 2 of the Protocol defines "control" as having "a substantial share of ownership rights and the ability to exercise decisive influence." While the United States would have preferred to omit this clause, paragraph 2 also states that differences as to the existence of control "shall be resolved" in accordance with the binding dispute settlement provisions contained in the treaty. Also this treaty, unlike the current model text, does not specify that investments may be controlled "directly or indirectly." Since Article I (1)(d) of the treaty specifies that "'own or control' includes ownership or control exercised through subsidiaries or affiliates," this omission is not significant.

(2) Existing Investments (Article II (2)(b)): Like the current model text, the treaty with Egypt specifically applies to pre-existing investments. This treaty provides, however, that pre-existing investments receive treaty protection if "accepted in accordance with the respective prevailing legislation of either party." U.S. investments established in Egypt after 1974 are covered by Egypt's Law 43 on Arab and Foreign Capital Investment and Free Zones (later amended by Law 32 of 1977) (Law 43). Law 43 and regulations thereunder contain application procedures, provisions on the assessment of assets, and registration of invested capital. The foreign investor's application, together with Egyptian government assessments, approvals, or certifications, entitle the investor to certain benefits and could be construed to constitute a contractual arrangement between the Egyptian government and the foreign investor, insofar as these arrangements are binding on both parties. While it is conceivable that such arrangements may in some respects be inconsistent with the present treaty and that U.S. investments established in Egypt under legislation in force prior to Law 43 may contain arrangements inconsistent with the treaty, U.S. negotiators are unaware of any such inconsistencies. Egypt has also agreed, in Article II (3)(a), that any additional limitations which a party may adopt with respect to those sectors excepted from the standards are not to affect existing investments.

(3) Right of Establishment (Article II): The treaty with Egypt contains the same rights with respect to establishment of an investment as are contained in the model text subject to one minor qualification. Although the treaty contains model language which permits investments to be established on MFN and national treatment basis (the latter subject to exceptions listed in an annex), Article II (3)(b) states that consistent with these rights each Party "retains the discretion to approve investments according to national plans and priorities on a non-discriminatory basis."

(4) Excepted sectors (Annex; Protocol): Egypt's list of sectors to be excluded from national treatment, found in the Annex, is extensive and includes "commercial activity such as distribution, wholesaling, retailing, import and export activities." Paragraph 12 of the Protocol limits this exception by stating that "commercial activity" does not include integrated operations which combine production

and sales activities for their products. In addition, in paragraph 13 of the Protocol each Party agrees to accord investments in investment banks, merchant banks and reinsurance companies whose activities are confined to foreign currency transactions "treatment no less favorable than that accorded under existing laws and regulations to investments by its own nationals and companies or to investments by nationals or companies of any third country, whichever is the more favorable." The Parties also agree to hold further discussions concerning the expansion of investment possibilities in the banking and insurance sectors. Finally, under paragraph 3(b) of the Protocol, United States investors may have a restricted right of establishment in "limited sensitive geographic areas designated for exclusive Egyptian investment." This responds to Egypt's public order and national security concerns about foreign investment in certain sensitive border regions. In these areas, United States investors' right of establishment will be on an MFN basis. Egypt reserves the right to modify these areas, provided such areas are kept to a minimum and "will not substantially impair the investment opportunities" of the United States nationals.

(5) Customs Union Exception (Paragraph 4 of Protocol): Under paragraph 4 of the Protocol, the Parties are not required to extend MFN treatment in excepted sectors if those advantages are derived from a special security or regional arrangement, including regional customs unions or free trade areas. Egypt requested this exception because it is a member of the Arab League. While the current model text does not contain a similar provision, similar customs union exceptions to MFN treatment are contained in United States BITs with Bangladesh, Haiti and Morocco.

(6) Treatment of Investment (Article II): This treaty deviates from the current model text on the treatment of investment in two respects:

(a) Although the treaty, like the current model text, grants national or MFN treatment to activities "associated" with an investment and includes the purchase of foreign exchange among these activities, Article II (2)(a) states that the purchase of foreign exchange for the operation of enterprises must be made "in accordance with national regulations and practices." This provision would essentially protect Egypt's foreign exchange reserves during periods of stringency. It was understood that such national laws and practices would not be discriminatory against the nationals and companies of the other Party.

(b) Article II (4) states that the "treatment, protection and security of investments shall never be less than that required by international law and national legislation." This clause is intended to place a floor under and reinforce the national/MFN treatment standard. It corresponds to a clause contained in the U.S. model BIT at the time the Egypt treaty was originally negotiated which has been modified in the current text. The current model text includes additional language, not contained in the Egypt treaty and derived from European BITS, which is intended to supplement national or MFN treatment, such as "fair and equitable treatment" and "full protection and security."

(7) Employment (Article II (5)): Although this treaty, like the current model text, permits nationals of either party to enter and to

reside in the territory of the other Party "for the purpose of establishing, developing, directing, administering or advising on the operations of an investment * * *," it deviates from the current model text concerning investors' rights to hire personnel of their choice in two minor respects. While the current model text permits investors to engage "top managerial personnel of their choice, regardless of nationality" this treaty grants this right with respect to "the managing director of their choice." In addition, the "regardless of nationality" phrase, included in the current model text to insure that companies of a Party investing in the United States otherwise comply with U.S. anti-discrimination employment laws in their hiring practices, was not included in this treaty. It is understood that the right to hire top managerial personnel remains nevertheless subject to U.S. anti-discrimination laws. (The "regardless of nationality" phrase was omitted in a similar provision in the U.S. BIT with Cameroon.) In addition, although Paragraph 5 of the Protocol states that the treaty does not derogate from each Party's right to establish qualifications for the exercise of a profession, this paragraph also states that it does not derogate from investors' rights to engage professional and technical personnel of their choice.

(8) Performance Requirements (Article II (6)): While the current model text prohibits performance requirements, Article II (6) of this treaty employs only a hortatory standard ("seek to avoid"). Similar hortatory language concerning performance requirements is found in United States BITs with Bangladesh, Haiti, Morocco, Senegal and Turkey. In addition, while the current model text takes a broad approach to performance requirements (and includes "commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements"), Paragraph 7 of the Protocol limits the definition of performance requirements to "conditions imposed which would require an investor to export a minimum percentage of final product or to source some inputs locally."

(9) Transfers (Article V; Paragraph 10 of the Protocol): The most significant departure from the current model text is in respect to transfers. Egypt has agreed to a transfers provision—Article V—which is substantially similar to that in the current model text. The current model text specifically states that "transfers related to an investment" shall be made "freely and without delay into and out of its territory * * *," and lists examples of types of funds subject to free transfer. This treaty by contrast simply states that each Party "shall in respect to investments by nationals or companies of the other Party grant to those nationals or companies the free transfer of," enumerated specific types of funds subject to free transfer. The types of funds listed are identical in substance to those in the current model text except that two categories identified in the current model text are not explicitly listed in the Egypt text: additional funds for the development (not merely the maintenance) of an investment and compensation payments arising from an investment dispute other than an expropriation.

In addition, under paragraph 10 of the Protocol, Egypt may temporarily delay transfers abroad of funds from liquidated invest-

ments if foreign exchange reserves are at a "very low level." In such cases, Egypt may delay transfers:

(i) in a manner not less favorable than that accorded to comparable transfers to investors of third countries; (ii) to the extent and for the time period necessary to restore its reserves to a minimally acceptable level, but in no case for period[s] of time longer than that permitted by the provisions of Law 43 in force on the date of signature of this Treaty; and (iii) after providing the investor an opportunity to invest the sales or liquidation proceeds in a manner which will preserve their real value free of exchange risk until transfer occurs.

Under Article 21 of Law 43, an investor may not, except in "exceptional circumstances," repatriate or dispose of his invested capital in less than five years after the importation of the capital into Egypt. (Within the statutory five year period, he may transfer the capital out of the country "at the highest rate prevailing and declared for freely convertible foreign currency in five equal annual installments.") Similar delays on the right to free transfers of liquidated capital on the basis of foreign exchange shortages were also accepted in United States BITs with Bangladesh, Turkey and Zaire.

(10) Expropriation (Article III): This treaty departs from the current model text expropriation provisions in several minor respects:

(a) Paragraph 8 of the Protocol states that "prompt" payment in the event of an expropriation "does not necessarily mean instantaneous * * * (t)he intent is that the Party diligently and expeditiously carry out any necessary formalities." This merely makes express what the United States has long regarded to be required under international law.

(b) While the treaty with Egypt omits specific use of the term "effective" compensation, the substance of that concept—assurance that once compensation has been paid the investor is able to withdraw his assets in usable form from the expropriating country—is retained. Thus, the treaty with Egypt provides that compensation shall be "freely realizable" and "freely transferable at the prevailing rate of exchange for current transactions on the date of the expropriatory action."

(c) Article III (1) provides that compensation "include payments for delay as may be considered appropriate under international law." The current model text is more specific about the international law standard, stating that payments for delay "bear current interest from the date of expropriation."

(d) While both the current model text and the treaty with Egypt provide that compensation shall not reflect any reduction in value due to "the occurrence of the events that constituted or resulted in the expropriatory action," paragraph 9 of the Protocol clarifies that this refers to conduct attributable to the expropriatory Party and not to the conduct of the investor.

(e) Paragraph 9 of the Protocol also clarifies that the Article III (1) requirement that an expropriation not violate "a specific contractual engagement" is without prejudice to the measure of compensation due in the event of an expropriation.

(f) The March 11, 1985 exchange of letters between the Parties states that compensation for purposes of Article III (1) "shall be determined in a manner consistent with international legal norms and standards rather than norms and standards that are particular to a specific domestic legal system." This assurance, made at Egypt's insistence, is implicit in the current model text reference to international law standards.

(11) Consultations Between Parties (Article VI): Like the current model text, this treaty provides that consultations between the Parties be held promptly upon the request of either Party to discuss the interpretation or application of the treaty or resolve related disputes. At the request of Egypt, this treaty goes beyond the current model text and also provides for biennial consultations to review the operation of the treaty in encouraging investments.

(12) Dispute Settlement Between a Party and an Investor (Article VII): This treaty modifies the dispute settlement provisions of the current model text in two respects:

(a) While the current model text specifically defines the types of "investment dispute" which are subject to arbitration to include "the interpretation or application of any investment authorization granted by a Party's foreign investment authority," no such clause appears in this treaty. Nonetheless, since this treaty, like the current model text, defines such arbitrable disputes to include both the interpretation of an investment agreement as well as "any right conferred or created" by this treaty "with respect to an investment," the failure to mention specifically this third type of dispute is of doubtful significance.

(b) Article VII (4) of this treaty states that investors "shall not be entitled to compensation for more than the value of the affected assets, taking into account all sources of compensation within the territory of the Party liable for the compensation." The intent of this language, inserted at the insistence of Egypt, is to protect the Parties against "double indemnity." Egyptian negotiators were concerned that U.S. investors not receive payment for the value of a single claim from both a local Egyptian insurance company (which is likely to be publicly owned) and the Egyptian Government. The language would not limit a U.S. investor from collecting payment on the same claim from a third party (non-Egyptian) insurance company.

Submission of this treaty marks a significant development in our international investment policy. I join with the United States Trade Representative and other U.S. Government agencies in supporting this treaty, with related exchange of letters and supplementary protocol, and favor its transmittal to the Senate at an early date.

Respectfully submitted,

GEORGE P. SHULTZ.

Attachment: Consolidated text prepared by the Office of the U.S. Trade Representative and Department of State.

[Consolidated Text]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE ARAB
REPUBLIC OF EGYPT CONCERNING THE RECIPROCAL ENCOURAGE-
MENT AND PROTECTION OF INVESTMENTS

Whereas, the United States of America and the Arab Republic of Egypt (each hereinafter referred to as a "Party"), both recognize the importance of providing mutually beneficial support for the major efforts that each has contributed in fostering international peace both within and beyond their respective regions, and

Whereas, each Party recognizes that economic expansion and development are basic elements in the process of strengthening the efforts for and the bonds of international peace and friendship within an atmosphere of stability and security, and

Whereas, each agrees that economic cooperation through the pursuit of policies and practices which foster bilateral trade and investment, will contribute substantially to the longterm benefit and welfare of the peoples of each Party, and

Recognizing that agreement on a general framework for the encouragement and nondiscriminatory treatment of investments will stimulate the flow of productive capital and technology and thereby provide for a more effective use of capital and technical resources for development needs, further promoting economic stability and durable peace,

Both have resolved to conclude a bilateral Treaty pertaining to the reciprocal encouragement and protection of investments, and

Have agreed as follows:

ARTICLE I

DEFINITIONS

1.¹ For the purposes of this Treaty,

(a) "company" means any kind of juridical entity; including any corporation, company, association, or other juridical entity, that is duly incorporated, constituted, or otherwise duly organized, regardless of whether or not the entity is duly organized for pecuniary gain, privately or publicly owned, or organized with limited or unlimited liability.

(b) "company of a Party" means a company duly incorporated, constituted, or otherwise duly organized under the applicable laws and regulations of a Party or its subdivisions in which

(i) natural persons who are nationals of such Party, or

(ii) such Party or its subdivision or their agencies or instrumentalities

have a substantial interest.

¹ The original text contains a paragraph 1, but no paragraph 2.

The juridical status of a company of a Party shall be recognized by the other Party and its subdivisions.

(c) "investment" means every kind of asset, owned or controlled, and includes but is not limited to:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value due under an investment agreement;

(iv) valid intellectual and industrial property rights, including, but not limited to, rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill;

(v) licenses and permits issued pursuant to law, including those issued for manufacture and sale of products;

(vi) any right conferred by law or contract including, but not limited to, rights, within the confines of law, to search for or utilize natural resources, and rights to manufacture, use and sell products;

(vii) returns which are reinvested.

(d) "own or control" includes ownership or control exercised through subsidiaries or affiliates.

(e) "national" of a Party means a natural person who is a national of a Party under its applicable law.

(f) "return" means an amount derived from an investment, including but not limited to, profit; dividend; interest; royalty payment; management, technical assistance or other fee; and payment in kind.

ARTICLE II

ENCOURAGEMENT AND PROMOTION OF INVESTMENTS

1. Each Party undertakes to provide an maintain a favorable environment for investments in its territory by nationals and companies of the other Party and shall, in applying its laws, regulations, administrative practices and procedures, permit such investments to be established and acquired on terms and conditions that accord treatment no less favorable than the treatment it accords to investments of its own nationals or companies or to nationals and companies of any third country, whichever is the most favorable.

2. (a) Each Party shall accord investments in its territory, and associated activities in connection with these investments, of nationals or companies of the other Party treatment no less favorable than that which it accords in like situations to investments and associated activities of its own nationals or companies, or nationals or companies of any third country, whichever is the most favorable. Associated activities in connection with an investment include, but are not limited to:

(i) the establishment, control and maintenance of branches, agencies, offices, factories or other facilities for the conduct of business;

(ii) the organization of companies under applicable laws and regulations; the acquisition of companies or interests in companies or in the property; and the management, control, maintenance, use, enjoyment and expansion, and the sale, liquidation, dissolution or other disposition, of companies organized or acquired;

(iii) the making, performance and enforcement of contracts related to investment;

(iv) the acquisition (whether by purchase, lease or any other legal means), ownerships and disposition (whether by sale, testament or any other legal means) of personal property of all kinds, both tangible and intangible;

(v) the leasing of real property appropriate for the conduct of business;

(vi) the acquisition, maintenance and protection of copyrights, patents, trademarks, trade secrets, trade names, licenses and other approvals of products and manufacturing processes, and other industrial property rights; and

(vii) the borrowing of funds at market terms and conditions from local financial institutions, as well as the purchase and issuance of equity shares in the local financial markets, and, in accordance with national regulations and practices, the purchase of foreign exchange for the operation of the enterprise.

(b) This Treaty shall also apply to investments by nationals or companies of either Party, made prior to the entering into force of this Treaty and accepted in accordance with the respective prevailing legislation of either Party.

3. (a) Notwithstanding the preceding provisions of this Article, each Party reserves the right to maintain limited exceptions to the standard of national treatment otherwise required concerning investments or associated activities if exceptions fall within one of the sectors listed in the Annex to this Treaty. Both Parties hereby agree to maintain the number of such exceptions to a minimum. In addition, each Party shall notify the other Party of any specific measures which constitute exceptions to the standard of national treatment provided herein. In no event, however, shall the treatment to be accorded pursuant to any exception be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country. Moreover, no exception, within the sectors contained in the Annex, introduced after the date of entry into force of this Treaty shall apply to investments of nationals or companies of the other Party existing in that sector at the time the exception becomes effective.

(b) Each Party retains the discretion to approve investments according to national plans and priorities on a nondiscriminatory basis consistent with paragraphs (1) and (3)(a) of this Article.

4. The treatment, protection and security of investments shall never be less than that required by international law and national legislation.

5. (a) Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to reside in the territory of the other Party for the purpose of establishing, developing, directing, administering or advising on the operations of an investment to which they or the companies that

employ them have committed or are in the process of committing a substantial amount of capital or other resources.

(b) Nationals and companies of either Party, and their companies which they own or control in the territory of the other Party, shall be able to engage the managing director of their choice. Further, subject to employment laws of each Party, nationals and companies of either Party shall be permitted to engage, within the territory of the other Party, professional and technical personnel of their choice, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of investments.

6. In the context of its national economic policies and objectives, each Party shall seek to avoid the imposition of performance requirements on the investments of nationals and companies of the other Party.

7. Each Party recognizes that in order to maintain a favorable environment for investments in its territory by nationals or companies of the other Party, it should provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Each Party shall grant to nationals or companies of the other Party, on terms and conditions no less favorable than those which it grants in like situations to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, who otherwise qualify under applicable laws and regulations of the forum for the purpose of asserting claims, and enforcing rights, with respect to their investments.

8. Each Party and its subdivisions shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to [or] affect investments in its territory of nationals or companies of the other Party.

ARTICLE III

COMPENSATION FOR EXPROPRIATION

1. No investment or any part of an investment of a national or company of either Party shall be expropriated or nationalized by the other Party or by a subdivision thereof—or subjected to any other measure, direct or indirect, if the effect of such other measure, or a series of such other measures, would be tantamount to expropriation or nationalization (all expropriations, all nationalizations and all such other measures hereinafter referred to as “expropriation”)—unless the expropriation

- (a) is done for a public purpose;
- (b) is accomplished under due process of law;
- (c) is not discriminatory;
- (d) is accompanied by prompt and adequate compensation, freely realizable; and
- (e) does not violate any specific contractual engagement.

Compensation shall be equivalent to the fair market value of the expropriated investment on the date of expropriation. The calculation of such compensation shall not reflect any reduction in such fair market value due to either prior public notice or announcement of the expropriatory action, or the occurrence of the events that constituted or resulted in the expropriatory action. Such compensation shall include payments for delay as may be considered appropriate under international law, and shall be freely transferable at the prevailing rate of exchange for current transactions on the date of the expropriatory action.

2. If either Party or a subdivision thereof expropriates the investment of any company duly incorporated, constituted or otherwise duly organized in its territory, and if nationals or companies of the other Party, directly or indirectly, own, hold or have other rights with respect to the equity of such company, then the Party within whose territory the expropriation occurs shall ensure that such nationals or companies of the other Party receive compensation in accordance with the provisions of the preceding paragraph.

3. Except as otherwise provided in an agreement between the Parties, or between a Party and a national or company of the other Party, a national or company of either Party that asserts that all or part of its investment in the territory of the other Party has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of such other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation thereof, conforms to the principles of international law.

ARTICLE IV

COMPENSATION FOR DAMAGES DUE TO WAR AND SIMILAR EVENTS

Nationals or companies of either Party whose investments or returns in the territory of either Party suffer

(a) damages due to war or other armed conflict between such other Party and a third country or

(b) damages due to any kind of civil disturbance or insurrection in the territory of such other Party,

shall be accorded treatment no less favorable than that which such other Party accords to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, when making restitution, indemnification, compensation or other appropriate settlement with respect to such damages.

ARTICLE V

TRANSFERS

1. Either Party shall in respect to investments by nationals or companies of the other Party grant to those nationals or companies the free transfer of:

(a) returns;

(b) royalties and other payments deriving from licenses, franchises and other similar grants or rights;

- (c) installments in repayment of loans;
- (d) amounts spent for the management of the investment in the territory of the other Party or a third country;
- (e) additional funds necessary for the maintenance of the investment;
- (f) the proceeds of partial or total sale or liquidation of the investment, including a liquidation effected as a result of any event mentioned in Article IV; and
- (g) compensation payments pursuant to Article III.

2. To the extent a national or company of either Party has not made another arrangement with the appropriate authorities of the other Party in whose territory the investment of such national or company is situated, currency transfers made pursuant to Paragraph 1 of this Article shall be permitted in the currency of the original investment or in any other freely convertible currency. Such transfers shall be made at the prevailing rate of exchange on the date of transfer with respect to current transactions in the currency to be transferred.

3. Notwithstanding the preceding paragraphs, either Party may maintain laws and regulations: (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE VI

CONSULTATIONS AND EXCHANGE OF INFORMATION

1. The Parties shall, upon the written request of either of them, promptly hold consultations to discuss the interpretation or application of this Treaty or to resolve any disputes in connection therewith.

2. Further, for the purpose of reviewing the operation of this Treaty in encouraging investments, consultations should be held biennially between the two Parties. Those consultations should aim at exchanging information and views on the progress regarding investments.

3. If one Party requests in writing that the other Party supply information in its possession concerning investments in its territory by nationals or companies of the Party making the request, then the other Party shall, consistent with its applicable laws and regulations and with due regard for business confidentiality, endeavor to establish appropriate procedures and arrangements for the provision of any such information.

ARTICLE VII

SETTLEMENT OF LEGAL INVESTMENT DISPUTES BETWEEN ONE PARTY AND A NATIONAL OR COMPANY OF THE OTHER PARTY

1. For purposes of this Article, a legal investment dispute is defined as a dispute involving (i) the interpretation or application of

an investment agreement between a Party and a national or company of the other Party; or (ii) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of a legal investment dispute between a Party and a national or company of the other Party with respect to an investment of such national or company in the territory of such Party, the parties shall initially seek to resolve the dispute by consultation and negotiation. The Parties may, upon the initiative of either of them and as a part of their consultation and negotiation, agree to rely upon non-binding, third-Party procedures. If the dispute cannot be resolved through consultation and negotiation, then the dispute shall be submitted for settlement in accordance with the applicable dispute-settlement procedures upon which a Party and national or company of the other Party have previously agreed. With respect to expropriation by either Party, any dispute-settlement procedures specified in an investment agreement between such Party and such national or company shall remain binding and shall be enforceable in accordance with the terms of the investment agreement and relevant provisions of domestic laws of such Party and treaties and other international agreements regarding enforcement of arbitral awards to which such Party has subscribed.

3. (a) In the event that the legal investment dispute is not resolved under procedures specified above, the national or company concerned may choose to submit the dispute to the International Centre for the Settlement of Investment Disputes ("Centre") for settlement by conciliation or binding arbitration, if, within six (6) months of the date upon which it arose: (i) the dispute has not been settled through consultation and negotiation; or (ii) the dispute has not, for any good faith reason, been submitted for resolution in accordance with any applicable dispute-settlement procedures previously agreed to by the Parties to the dispute; or (iii) the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a Party to the dispute.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration.

(c) Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ("Convention") and the Regulations and Rules of the Centre.

4. In any proceeding, judicial, arbitral or otherwise, concerning a legal investment dispute between it and a national or company of the other Party, A Party Shall not assert, as a defense, counterclaim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third Party whatsoever, whether public or private, including such other Party and its subdivisions, agencies and instrumentalities. Notwithstanding the foregoing, a national or company of the other Party shall not be entitled to compensation for more than the value of its affected assets, taking

into account all sources of compensation within the territory of the Party liable for the compensation.

5. For the purpose of any proceedings initiated before the Centre in accordance with this Article, any company that, immediately prior to the occurrence of the event or events giving rise to the dispute was a company of the other Party, shall be treated as a national or company of such other Party.

6. The provisions of this Article shall not apply to a dispute arising under an official export credit, guarantee, or insurance arrangement, pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE VIII

SETTLEMENT OF DISPUTES BETWEEN THE PARTIES CONCERNING INTERPRETATION OR APPLICATION OF THIS TREATY

1. Any dispute between the Parties concerning the interpretation or application of this Treaty should, if possible, be resolved through diplomatic channels.

2. If the dispute cannot be resolved through diplomatic channels, it shall, upon the agreement of the Parties, be submitted to the International Court of Justice.

3. (a) In the absence of such agreement, the dispute shall, upon the written request of either Party, be submitted to an arbitral tribunal for binding decision in accordance with the applicable rules and principles of international law.

(b) The Tribunal shall consist of three arbitrators, one appointed by each Party, and a Chairman appointed by agreement of the other two arbitrators. The Chairman shall not be a national of either Party. Each Party shall appoint an arbitrator within 60 days, and the Chairman shall be appointed within 90 days, after a Party has requested arbitration of a dispute.

(c) If the period set forth in (b) above are not met, and in the absence of some other arrangement between the Parties, either Party may invite the President of the International Court of Justice to make the necessary appointment. If the President is a national of either of the Parties or is unable to act for any reason, either Party may invite the Vice President, or if he is also a national of either Party or otherwise unable to act, the next most senior member of the International Court of Justice, to make the appointment.

(d) In the event that an arbitrator is for any reason unable to perform his duties, a replacement shall be appointed within thirty (30) days of determination thereof, utilizing the same method by which the arbitrator being replaced was appointed. If a replacement is not appointed within the time limit specified above, either Party may invite the President of the International Court of Justice to make the necessary appointment. If the President is a national of either of the Parties or is unable to act for any reason, either Party may invite the Vice President, or if he is also a national of either Party or otherwise unable to act, the next most senior member of the International Court of Justice, to make the appointment.

(e) Unless otherwise agreed to by the Parties to the dispute, all submissions shall be made and all hearings shall be completed within one hundred and twenty (120) days of the date of the selection of the third arbitrator, and the Tribunal shall render its decision within thirty (30) days of the date of the final submissions or the date of the closing of the hearings, whichever is later, and such decision shall be binding on each Party.

(f) Except as otherwise agreed to by the Parties, arbitration proceedings shall be governed by the Model Rules on Arbitral Procedure adopted by the United Nations International Law Commission in 1958 ("Model Rules") and commended to Member States by the United Nations General Assembly in Resolution 1262 (XIII). To the extent that procedural questions are not resolved by this Article or the Model Rules they shall be resolved by the Tribunal. Notwithstanding any other provision of this Treaty or the Model Rules, the Tribunal shall in all cases act by majority vote.

(g) Each Party shall bear the costs of its own arbitrator and counsel in the arbitral proceeding. Expenses incurred by the Chairman and other costs of the proceedings shall be paid for equally by the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties. Such a decision shall be binding.

4. The provisions of this Article shall not apply to a dispute arising under an official export credit, guarantee or insurance arrangement, pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX

PRESERVATION OF RIGHTS

1. This Treaty shall not supersede, prejudice, or otherwise derogate from (a) laws, regulations, administrative practices or procedures, or adjudicatory decisions of either Party, (b) international legal obligations, or (c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization, whether extant at the time of entry into force of this Treaty or thereafter, that entitle investments or associated activities of nationals or companies of the other Party to treatment more favorable than that accorded by this Treaty in like situations.

2. This Treaty shall not derogate from or terminate any other agreement entered into by the two Parties and in force as between the two Parties on the date on which this Treaty enters into force.

ARTICLE X

MEASURES NOT PRECLUDED BY TREATY

1. This Treaty shall not preclude the application by either Party or any subdivision thereof of any and all measures necessary for the maintenance of public order and morals, the fulfillment of its existing international obligations, the protection of its own security interests, or such measures deemed appropriate by the Parties to fulfill future international obligations.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments in its territory of nationals and companies of the other Party, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XI

TAXATION

With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investments of nationals or companies of the other Party. Nevertheless, all matters relating to the taxation of nationals or companies of a Party, or their investments in the territories of the other Party or a subdivision thereof shall be excluded from this Treaty, except with regard to measures covered by Article III and the specific provisions of Article V.

ARTICLE XII

APPLICATION OF TREATY TO POLITICAL OR ADMINISTRATIVE SUBDIVISIONS OF THE PARTIES

This Treaty shall apply to the political and/or administrative subdivisions of each Party.

ARTICLE XIII

ENTRY INTO FORCE AND DURATION AND TERMINATION

1. This Treaty shall be ratified by each of the Parties, and the instruments of ratification thereof shall be exchanged as soon as possible.

2. This Treaty shall enter into force thirty (30) days after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with Paragraph 3 of this Article.

3. Either Party may, by giving one (1) year's written notice to the other Party, terminate this Treaty at the end of the initial ten (10) year period or at any time thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall continue to be effective for a further period of ten (10) years from such date of termination.

5. The attached Annex and Protocol are integral parts of this Treaty.

DONE in duplicate at Washington this twenty-ninth day of September 1982² in the English and Arabic languages, both texts being equally authentic.

For the United States of America:

WILLIAM E. BROCK, Jr.

For the Arab Republic of Egypt:

WAJIH SHINDI.

² As modified by the Supplementary Protocol, signed at Cairo, March 11, 1986.

ANNEX

Consistent with Article II paragraph 3, each Party reserves the right to maintain limited exceptions in the sectors it has indicated below:

THE UNITED STATES OF AMERICA

Air transportation, ocean and coastal shipping; banking; insurance; government grants; government insurance and loan programs; energy and power production; use of land and natural resources; custom house brokers; ownership of real estate; radio and television broadcasting; telephone and telegraph services; submarine cable services; satellite communications.

THE ARAB REPUBLIC OF EGYPT

Air and sea transportation; maritime agencies; land transportation other than that of tourism; mail, telecommunication, telegraph services and other public services which are state monopolies; banking and insurance; commercial activity such as distribution, wholesaling, retailing, import and export activities; commercial agency and broker activities; ownership of real estate; use of land; natural resources; national loans; radio, television, and the issuance of newspapers and magazines.

PROTOCOL³

On signing the Treaty concerning the Reciprocal Encouragement and Protection of Investments, the Arab Republic of Egypt and the United States of America have, in addition, agreed on the following provisions which should be regarded as an integral part of this Treaty:

1. Each Party reserves the right to deny the benefits of this Treaty to any company of either Party, or its affiliates or subsidiaries, if nationals of any third country control such company, affiliate or subsidiary; provided that, whenever one Party concludes that the benefits of this Treaty should not be extended for this reason, it shall promptly consult with the other Party to seek a mutually satisfactory resolution of this matter.

2. "Control" means to have a substantial share of ownership rights and the ability to exercise decisive influence. Differences as to the existence of control shall be resolved according to the provisions of Article VIII.

3. (a) The treatment accorded by the United States to nationals or companies of Egypt under the provisions of Article II (1) and (2) shall in any State of the United States or other territory, possession, or political or administrative subdivision of the United States be the treatment accorded therein to residents of or companies incorporated, constituted or otherwise duly organized in other States

³ Text as agreed in Supplementary Protocol, signed at Cairo, March 11, 1986. This replaces the protocol of September 29, 1982.

of the United States or territories, possessions, or political or administrative subdivisions of the United States.

(b) The treatment accorded by Egypt to nationals and companies of the United States with respect to the establishment and acquisition of investments in limited sensitive geographic areas designated for exclusive Egyptian investment shall be no less favorable than the treatment it accords to investments of nationals and companies of any third country. Egypt reserves the right to modify the areas covered, provided that such areas will be kept to a minimum and will not substantially impair the investment opportunities of United States nationals and companies.

4. The provisions of Article II, paragraph 3, relating to most favored nation treatment, shall not apply to advantages accorded by either Party to nationals or companies of a third country by virtue of a special security or regional arrangement, including regional customs unions or free trade areas. Further, these provisions do not apply to the ownership of real estate. The provisions of Article II paragraph 1, relating to most favored nation treatment, shall not be construed to oblige one Party to extend to nationals or companies of the other the benefit of any treatment, preference or privilege which may be extended by the former Party by virtue of a customs union or in the field of housing. Moreover, with regard to rights to engage in mining on the public domain, each Party retains the right to accord to nationals or companies of the other Party treatment which is like or similar to that accorded by the other Party to nationals or companies of the first Party.

5. It is understood that this Treaty does not derogate from the rights of either Party regarding the establishment of qualifications as for the practice of professions, including law and accountancy. These qualifications may confine the practice of such professions to nationals or companies of a Party, provided that they are applied on a nondiscriminatory basis; and provided, further, that such nationality requirements do not derogate from the right of nationals and companies of either Party, pursuant to Article II (5)(b) to engage professional and technical personnel of their choice to render professional and technical services necessary for the internal planning and operation of the investment.

6. This Treaty, and in particular, the provisions of Article II, paragraph 5(b) shall be subject to the provisions of Article X.

7. With respect to Article II (6), performance requirements are conditions imposed which would require an investor to export a minimum percentage of final product or to source some inputs locally.

8. With regard to Article III, paragraph 1(d) the term "prompt" does not necessarily mean instantaneous. The intent is that the Party diligently and expeditiously carry out any necessary formalities.

9. With regard to Article III, paragraph 1, the phrase "events that constituted or resulted in the expropriatory action" refers to conduct attributable to the expropriatory Party and not to conduct of the national or company. The inclusion of subparagraph (e) in Article III, paragraph 1, is without prejudice to the measure of compensation due in the event of expropriation.

10. The Parties recognize that restrictions on transfers abroad of sales or liquidation proceeds of an investment will adversely affect future capital inflows, contrary to the spirit of this Treaty and the interests of the Party imposing those restrictions. Nevertheless, the Parties recognize that it is possible that the Arab Republic of Egypt may find its foreign exchange reserves at a very low level. In these circumstances, the Arab Republic of Egypt may temporarily delay transfers required under Article V, Paragraph 1(f), but only: (i) in a manner not less favorable than that accorded to comparable transfers to investors of third countries; (ii) to the extent and for the time period necessary to restore its reserves to a minimally acceptable level, but in no case for period of time longer than that permitted by the provisions of Law 43 in force on the date of signature of this Treaty; and (iii) after providing the investor an opportunity to invest the sales or liquidation proceeds in a manner which will preserve their real value free of exchange risk until transfer occurs.

11. Concerning Article VII (3)(a)(ii), it is understood that the Parties to the dispute may previously agree to submission of the dispute to the jurisdiction of domestic courts and tribunals. The Parties will maintain a nondiscriminatory policy regarding the inclusion and implementation of such provisions in any investment contract.

12. With regard to the Annex, the exceptions noted by the Arab Republic of Egypt under "commercial activity" do not include integrated operations which combine production and sales activities for their products.

13. Recognizing that international financial markets and institutions further stimulate the process of economic development through the international transmission of investment and associated technology, each Party undertakes to maintain a favorable environment for investment by nationals or companies of the other Party in the insurance and banking sectors. Therefore, each Party accords to investments by nationals or companies of the other Party in investment banks, merchant-banks and reinsurance companies whose activities are confined to transactions in foreign currencies treatment no less favorable than that accorded under existing laws and regulations to investments by its own nationals and companies or to investments by nationals or companies of any third country, whichever is the more favorable. Both Parties agree to hold future discussions concerning the expansion of investment possibilities in these sectors by nationals or companies of either Party in the territory of the other Party.

DONE in duplicate at Cairo this 11th day of March 1986 in the English and Arabic languages, both texts being equally authentic.

For the Government of the United States of America:

NICHOLAS A. VELIOTES,
Ambassador.

For the Government of the Arab Republic of Egypt:

Sultan ABU ALI,
Minister of Economy and Trade.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE ARAB
REPUBLIC OF EGYPT CONCERNING THE RECIPROCAL ENCOURAGE-
MENT AND PROTECTION OF INVESTMENTS

Whereas, the United States of America and the Arab Republic of Egypt (each hereinafter referred to as a "Party"), both recognize the importance of providing mutually beneficial support for the major efforts that each has contributed in fostering international peace both within and beyond their respective regions, and

Whereas, each Party recognizes that economic expansion and development are basic elements in the process of strengthening the efforts for and the bonds of international peace and friendship within an atmosphere of stability and security, and

Whereas, each agrees that economic cooperation through the pursuit of policies and practices which foster bilateral trade and investment, will contribute substantially to the long-term benefit and welfare of the peoples of each Party, and

Recognizing that agreement on a general framework for the encouragement and nondiscriminatory treatment of investments will stimulate the flow of productive capital and technology and thereby provide for a more effective use of capital and technical resources for development needs, further promoting economic stability and durable peace,

Both have resolved to conclude a bilateral Treaty pertaining to the reciprocal encouragement and protection of investments, and

Have agreed as follows:

ARTICLE I

DEFINITIONS

1. For the purposes of this Treaty,

(a) "company" means any kind of juridical entity; including any corporation, company, association, or other organization, that is duly incorporated, constituted, or otherwise duly organized, regardless of whether or not the entity is duly organized for pecuniary gain, privately or publicly owned, or organized with limited or unlimited liability.

(b) "company of a Party" means a company duly incorporated, constituted, or otherwise duly organized under the applicable laws and regulations of a Party or a political or administrative subdivision thereof in which

- (i) natural persons who are nationals of such Party, or
 - (ii) such Party or a political or administrative subdivision thereof or their agencies or instrumentalities
- have a substantial interest.

Each Party reserves the right to deny to any of its own companies or to a company of the other Party the advantages of this Treaty, if nationals of any third country own or control such company; provided that whenever one Party believes that the benefits of this Treaty should not be extended to a company of the other Party for this reason, it shall first consult with the other Party to seek a mutually satisfactory resolution of this matter.

The juridical status of a company of a Party shall be recognized by the other Party and its political or administrative subdivisions.

(c) "investment" means every kind of investment, owned or controlled, including equity, debt, service and investment contracts; and includes, but is not limited to:

(i) tangible and intangible property, including rights; such as mortgages, liens and pledges;

(ii) a company or shares of stock in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value due under an investment agreement;

(iv) valid intellectual and industrial property rights, including, but not limited to, rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill;

(v) licenses and permits issued pursuant to law, including those issued for manufacture and sale of products;

(vi) any right conferred by law or contract including, but not limited to, rights, within the confines of law, to search for or utilize natural resources, and rights to manufacture, use and sell products;

(vii) returns which are reinvested.

(d) "own or control" means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates, wherever located.

(e) "national" of a Party means a natural person who is a national of a Party under its applicable law.

(f) "return" means an amount derived from an investment, including but not limited to, profit; dividend; interest; royalty payment; management, technical assistance or other fee; and payment in kind.

ARTICLE II

ENCOURAGEMENT AND PROMOTION OF INVESTMENTS

1. Each Party undertakes to provide and maintain a favorable environment for investments in its territory by nationals and companies of the other Party and shall, in applying its laws, regulations, administrative practices and procedures, permit such investments to be established and acquired on terms and conditions that accord treatment no less favorable than the treatment it accords to investments of its own nationals or companies or to nationals and companies of any third country, whichever is the most favorable.

2. (a) Each Party shall accord investments in its territory, and associated activities related to these investments, of nationals or companies of the other Party treatment no less favorable than that which it accords in like situations to investments and associated activities of its own nationals or companies, or nationals or companies of any third country, whichever is the most favorable. Associated activities related to an investment include, but are not limited to:

(i) the establishment, control and maintenance of branches, agencies, offices, factories or other facilities for the conduct of business;

(ii) the organization of companies under applicable laws and regulations; the acquisition of companies or interests in companies or in their property; and the management, control, maintenance, use, enjoyment and expansion, and the sale, liquidation, dissolution or other disposition, of companies organized or acquired;

(iii) the making, performance and enforcement of contracts related to investment;

(iv) the acquisition (whether by purchase, lease or any other legal means), ownership and disposition (whether by sale, testament or any other legal means) of personal property of all kinds, both tangible and intangible.

(v) the leasing of real property appropriate for the conduct of business;

(vi) the acquisition, maintenance and protection of copyrights, patents, trademarks, trade secrets, trade names, licenses and other approvals of products and manufacturing processes, and other industrial property rights; and,

(vii) the borrowing of funds at market terms and conditions from local financial institutions, as well as the purchase and issuance of equity shares in the local financial markets, and, in accordance with national regulations and practices, the purchase of foreign exchange for the operation of the enterprise.

2. (b) Consistent with paragraph 4 of this Article, each Party shall apply the present Treaty to investments in its territory by nationals or companies of the other Party made prior to the entry into force of this Treaty provided such application is not inconsistent with agreements, contractual arrangements, investment authorizations and licenses made under legislation existing at the time the concerned investments were made.

3. Notwithstanding the preceding provisions of this Article, each Party reserves the right to maintain limited exceptions to the standard of national treatment otherwise required concerning investments or associated activities if such exceptions fall within one of the sectors listed in the Annex to this Treaty. Both parties hereby agree to maintain the number of such exceptions to a minimum. In addition, each Party shall notify the other Party of any specific measures which constitute exceptions to the standard of national treatment provided herein. In no event, however, shall the treatment to be accorded pursuant to any exception be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country. Moreover, no exception, within the sectors contained in the Annex, introduced after the date of entry into force of this Treaty shall apply to investments of nationals or companies of the other Party existing in that sector at the time the exception becomes effective.

4. The treatment, protection and security of investments shall never be less than that required by international law and national legislation.

5. (a) Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, directing, administering or advising on the operations of an investment to which they or the companies that

employ them have committed or are in the process of committing a substantial amount of capital or other resources.

(b) Nationals and companies of either Party, and their companies which they own or control in the territory of the other Party, shall be able to engage the managing director of their choice. Further, subject to employment laws of each Party, nationals and companies of either Party shall be permitted to engage, within the territory of the other Party, professional and technical personnel of their choice, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of investments.

6. In the context of national economic policies and the desire to promote investment of all types, both private and public, the Parties recognize that conditions of competitive equality should be maintained where investments owned or controlled by a Party or its agencies or instrumentalities, within the territory of such Party, are in competition under similar conditions and situations with privately owned or controlled investments of nationals or companies of the other Party.

7. In the context of its national economic policies and objectives, each Party shall seek to avoid the imposition of performance requirements on the investments of nationals and companies of the other Party.

8. Each Party recognizes that in order to maintain a favorable environment for investments in its territory by nationals or companies of the other Party, it should provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Each Party shall grant to nationals or companies of the other Party, on terms and conditions no less favorable than those which it grants in like situations to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, who otherwise qualify under applicable laws and regulations of the forum for the purpose of asserting claims, and enforcing rights, with respect to their investments.

9. Each Party and its political or administrative subdivisions shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments in its territory of nationals or companies of the other Party.

ARTICLE III

COMPENSATION FOR EXPROPRIATION

1. No investment or any part of an investment of a national or a company of either Party shall be expropriated or nationalized by the other Party or a political or administrative subdivision thereof—or subjected to any other measure, direct or indirect (including, for example, the levying of taxation, the compulsory sale of all or part of such an investment, or impairment or deprivation of man-

agement, control or economic value of such an investment by the national or company concerned), if the effect of such other measure, or a series of such other measures, would be tantamount to expropriation or nationalization (all expropriations, all nationalizations and all such other measures hereinafter referred to as "expropriation")—unless the expropriation

- (a) is done for a public purpose;
- (b) is accomplished under due process of law;
- (c) is not discriminatory;
- (d) is accompanied by prompt and adequate compensation, freely realizable; and
- (e) does not violate any specific provision on contractual stability or expropriation contained in an investment agreement between the national or company concerned and the Party making the expropriation.

Compensation shall be equivalent to the fair market value of the expropriated investment on the date of expropriation. The calculation of such compensation shall not reflect any reduction in such fair market value due to either prior public notice or announcement of the expropriatory action, or the occurrence of the events that constituted or resulted in the expropriatory action. Such compensation shall include payments for delay as may be considered appropriate under international law, and shall be freely transferable at the prevailing rate of exchange for current transactions on the date of the expropriatory action.

2. If either Party or a political or administrative subdivision thereof expropriates the investment of any company duly incorporated, constituted or otherwise duly organized in its territory, and if nationals or companies of the other Party, directly or indirectly, own, hold or have other rights with respect to the equity of such company, then the Party within whose territory the expropriation occurs shall ensure that such nationals or companies of the other Party receive compensation in accordance with the provisions of the preceding paragraph.

3. Except as otherwise provided in an agreement between the Parties, or between a Party and a national or company of the other Party, a national or company of either Party that asserts that all or part of its investment in the territory of the other Party has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of such other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation thereof, conforms to the principles of international law as set forth in this Article.

ARTICLE IV

COMPENSATION FOR DAMAGES DUE TO WAR AND SIMILAR EVENTS

Nationals or companies of either Party whose investments or returns in the territory of either Party suffer

- (a) damages due to war or other armed conflict between such other Party and a third country or

(b) damages due to any kind of civil disturbance or insurrection in the territory of such other party, shall be accorded treatment no less favorable than that which such other Party accords to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, when making restitution, indemnification, compensation or other appropriate settlement with respect to such damages.

ARTICLE V

TRANSFERS

1. Either Party shall in respect to investments by nationals or companies of the other Party grant to those nationals or companies the free transfer of:

- a. returns.
- b. royalties and other payments deriving from licenses, franchises and other similar grants or rights.
- c. installments in repayment of loans.
- d. amounts spent for the management of the investment in the territory of the other Party or a third country.
- e. Additional funds necessary for the maintenance of the investment.
- f. the proceeds of partial or total sale or liquidation of the investment, including a liquidation effected as a result of any event mentioned in Article IV; and
- g. compensation payments pursuant to Article III.

2. To the extent a national or company of either Party has not made another arrangement with the appropriate authorities of the other Party in whose territory the investment of such national or company is situated, currency transfers made pursuant to Paragraph 1 of this Article shall be permitted in the currency of the original investment or in any other freely convertible currency. Such transfers shall be made at the prevailing rate of exchange on the date of transfer with respect to current transactions in the currency to be transferred.

3. Notwithstanding the preceding paragraphs, either Party may maintain laws and regulations: (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE VI

CONSULTATIONS AND EXCHANGE OF INFORMATION

1. The Parties shall, upon the written request of either of them, promptly hold consultations to discuss the interpretation or application of this Treaty or to resolve any disputes in connection therewith. Consultations shall be held should one Party request consultations to discuss the effects on its national interests of laws,

regulations, decisions, administrative practices or procedures, or policies of the other Party that pertain to or affect investments of its nationals or companies in the territory of such other Party, including conditions imposed on establishment of investments. The consultations will seek to avoid or ameliorate the adverse effects that these laws, regulations, decisions, administrative practices or procedures, or policies may have on the Party requesting the consultations.

2. Further, for the purpose of reviewing the operation of this Treaty in encouraging investments, consultations should be held biennially between the two Parties. Those consultations should aim at exchanging information and views on the progress regarding investments.

3. If one Party requests in writing that the other Party supply information in its possession concerning investments in its territory by nationals or companies of the Party making the request, then the other Party shall, consistent with its applicable laws and regulations and with due regard for business confidentiality, endeavor to establish appropriate procedures and arrangements for the provision of any such information.

ARTICLE VII

SETTLEMENT OF LEGAL INVESTMENT DISPUTES BETWEEN ONE PARTY AND A NATIONAL OR COMPANY OF THE OTHER PARTY

1. For purposes of this Article, a legal investment dispute is defined as a dispute involving (i) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; or (ii) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of a legal investment dispute between a Party and a national or company of the other Party with respect to an investment of such national or company in the territory of such Party, the parties shall initially seek to resolve the dispute by consultation and negotiation. The Parties may, upon the initiative of either of them and as part of their consultation and negotiation, agree to rely upon non-binding, third-Party procedures. If the dispute cannot be resolved through consultation and negotiation, then the dispute shall be submitted for settlement in accordance with the applicable dispute-settlement procedures upon which a Party and national or company of the other Party have previously agreed. With respect to expropriation by either Party, any dispute-settlement procedures specified in an investment agreement between such Party and such national or company shall remain binding and shall be enforceable in accordance with the terms of the investment agreement and relevant provisions of domestic laws of such Party and treaties and other international agreements regarding enforcement of arbitral awards to which such Party has subscribed.

3. (a) In the event that the legal investment dispute is not resolved under procedures specified above, the national or company concerned may choose to submit the dispute to the International Centre for the Settlement of Investment Disputes ("Centre") for settlement by conciliation or binding arbitration, if, within six (6)

months of the date upon which it arose: (i) the dispute has not been settled through consultation and negotiation; or (ii) the dispute has not, for any good faith reason, been submitted for resolution in accordance with any applicable dispute-settlement procedures previously agreed to by the Parties to the dispute; or (iii) the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a Party to the dispute.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration.

(c) Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ("Convention") and the Regulations and Rules of the Centre.

4. In any proceeding, judicial, arbitral or otherwise, concerning a legal investment dispute between it and a national or company of the other Party, a Party shall not assert, as a defense, counter-claim right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third Party whatsoever, whether public or private, including such other Party and its political or administrative subdivisions, agencies and instrumentalities. Notwithstanding the foregoing, a national or company of the other Party shall not be entitled to compensation for more than the value of its affected assets, taking into account all sources of compensation within the territory of the Party liable for the compensation.

5. For the purpose of any proceedings initiated before the Centre in accordance with this Article, any company that, immediately prior to the occurrence of the event or events giving rise to the dispute, was a company of the other Party, shall be treated as a national or company of such other Party.

6. The provisions of this Article shall not apply to a dispute arising under an official export credit, guarantee, or insurance arrangement, pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE VIII

SETTLEMENT OF DISPUTES BETWEEN THE PARTIES CONCERNING INTERPRETATION OR APPLICATION OF THIS TREATY

1. Any dispute between the Parties concerning the interpretation or application of this Treaty should, if possible, be resolved through diplomatic channels.

2. If the dispute cannot be resolved through diplomatic channels, it shall, upon the agreement of the Parties, be submitted to the International Court of Justice.

3. (a) In the absence of such agreement, the dispute shall, upon the written request of either Party, be submitted to an arbitral tribunal for binding decision in accordance with the applicable rules and principles of international law.

(b) The Tribunal shall consist of three arbitrators, one appointed by each Party, and a Chairman appointed by agreement of the other two arbitrators. The Chairman shall not be a national of either Party. Each Party shall appoint an arbitrator within 60 days, and the Chairman shall be appointed within 90 days, after a Party has requested arbitration of a dispute.

(c) If the periods set forth in (b) above are not met, and in the absence of some other arrangement between the Parties, either Party may invite the President of the International Court of Justice to make the necessary appointment. If the President is a national of either of the Parties or is unable to act for any reason, either Party may invite the Vice President, or if he is also a national of either Party or otherwise unable to act, the next most senior member of the International Court of Justice, to make the appointment.

(d) In the event that an arbitrator is for any reason unable to perform his duties, a replacement shall be appointed within thirty (30) days of determination thereof, utilizing the same method by which the arbitrator being replaced was appointed. If a replacement is not appointed within the time limit specified above, either Party may invite the President of the International Court of Justice to make the necessary appointment. If the President is a national of either of the Parties or is unable to act for any reason, either Party may invite the Vice President, or if he is also a national of either Party or otherwise unable to act, the next most senior member of the International Court of Justice, to make the appointment.

(e) Unless otherwise agreed to by the Parties to the dispute, all submissions shall be made and all hearings shall be completed within one hundred and twenty (120) days of the date of the selection of the third arbitrator, and the Tribunal shall render its decision within thirty (30) days of the date of the final submissions or the date of the closing of the hearings, whichever is later, and such decisions shall be binding on each Party.

(f) Except as otherwise agreed to by the Parties, arbitration proceedings shall be governed by the Model Rules on Arbitral Procedure adopted by the United Nations International Law Commission in 1958 ("Model Rules"), and commended to Member States by the United Nations General Assembly in Resolution 1262 (XIII). To the extent that procedural questions are not resolved by this Article or the Model Rules they shall be resolved by the Tribunal. Notwithstanding any other provisions of this Treaty or the Model Rules, the Tribunal shall in all cases act by majority vote.

(g) Each Party shall bear the costs of its own arbitrator and counsel in the arbitral proceeding. The cost of the Chairman and remaining expenses shall be borne in equal parts by the Parties.

4. The provisions of this Article shall not apply to a dispute arising under an official export credit, guarantee, or insurance arrangement, pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX

PRESERVATION OF RIGHTS

1. This Treaty shall not supersede, prejudice, or otherwise derogate from (a) laws, regulations, administrative practices or procedures, or adjudicatory decisions of either Party, (b) international legal obligations, or (c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization, whether extant at the time of entry into force of this Treaty or thereafter, that entitle investments or associated activities of nationals or companies of the other Party to treatment more favorable than that accorded by this Treaty in like situations.

2. This Treaty shall not derogate from or terminate any other agreement entered into by the two Parties and in force as between the two Parties on the date on which this Treaty enters into force.

ARTICLE X

MEASURES NOT PRECLUDED BY TREATY

1. This Treaty shall not preclude the application by either Party or any political or administrative subdivision thereof of any and all measures necessary for the maintenance of public order and morals, the fulfillment of its existing international obligations, the protection of its own security interests, or such measures deemed appropriate by the Parties to fulfill future international obligations.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments in its territories of nationals and companies of the other Party, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XI

TAXATION

With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investments of nationals or companies of the other Party. Nevertheless, all matters relating to the taxation of nationals or companies of a Party, or their investments in the territories of the other Party or a political or administrative subdivision thereof shall be excluded from this Treaty, subject, however, to specific provisions of Articles III and V.

ARTICLE XII

APPLICATION OF TREATY TO POLITICAL OR ADMINISTRATIVE
SUBDIVISIONS OF THE PARTIES

This Treaty shall apply to the political and/or administrative subdivisions of each Party.

ARTICLE XIII

ENTRY INTO FORCE AND DURATION AND TERMINATION

1. This Treaty shall be ratified by each of the Parties, and the instruments of ratification thereof shall be exchanged as soon as possible.

2. This Treaty shall enter into force thirty (30) days after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with Paragraph 3 of this Article.

3. Either Party may, by giving one (1) year's written notice to the other Party, terminate this Treaty at the end of the initial ten (10) year period or at any time thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall continue to be effective for a further period of ten (10) years from such date of termination.

5. The attached Annex and Protocol are integral parts of this Treaty.

DONE in duplicate at Washington this twenty-ninth day of September 1982 in the English and Arabic languages, both texts being equally authentic.

For the United States of America:

WILLIAM E. BROCK, Jr.

For the Arab Republic of Egypt:

WAJIH SHINDY.

ANNEX

Consistent with Article II paragraph 3, each Party reserves the right to maintain limited exceptions in the sectors it has indicated below:

THE UNITED STATES OF AMERICA

Air transportation, ocean and coastal shipping; banking; insurance; government grants; government insurance and loan programs; energy and power production; use of land and natural resources; custom house brokers; ownership of real estate; radio and television broadcasting; telephone and telegraph services; submarine cable services; satellite communications.

THE ARAB REPUBLIC OF EGYPT

Air and sea transportation; maritime agencies; land transportation other than that of tourism; mail, telecommunication, telegraph services and other public services which are state monopolies; banking and insurance; commercial activity such as distribution, wholesaling, retailing, import and export activities; commercial agency and broker activities; ownership of real estate; use of land; natural resources; national loans; radio, television, and the issuance of newspapers and magazines.

SUPPLEMENTARY PROTOCOL

The duly authorized Plenipotentiaries of the Parties have agreed upon the following provisions regarding the Treaty between the United States of America and the Arab Republic of Egypt concerning the Reciprocal Encouragement and Protection of Investments, signed in Washington, D.C. on September 29, 1982. The following changes will form an integral part of the Treaty. Upon the completion of the Parties' respective constitutional procedures for approval, these changes will be integrated into a single unified text of the Treaty which will, as modified, be published as the official Treaty text.

ARTICLE I

Paragraph 1(a) is changed to read as follows:

- (a) "company" means any kind of juridical entity; including any corporation, company, association, or other juridical entity, that is duly incorporated, constituted, or otherwise duly organized, regardless of whether or not the entity is duly organized for pecuniary gain, privately or publicly owned, or organized with limited or unlimited liability.

Paragraph 1(b) is changed to read as follows:

- (b) "company of a Party" means a company duly incorporated, constituted, or otherwise duly organized under the applicable laws and regulations of a Party or its subdivisions in which
- (i) natural persons who are nationals of such Party, or
 - (ii) such Party or its subdivisions or their agencies or instrumentalities
- have a substantial interest.

The juridical status of a company of a Party shall be recognized by the other Party and its subdivisions.

Paragraph 1(c) is changed to read as follows:

- (c) investment means every kind of asset, owned or controlled, and includes but is not limited to:
- (i) tangible and intangible property, including rights, such as mortgages, liens and pledges;
 - (ii) a company or shares of stock in a company or interests in the assets thereof;
 - (iii) a claim to money or a claim to performance having economic value due under an investment agreement;
 - (iv) valid intellectual and industrial property rights, including, but not limited to, rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill;
 - (v) licenses and permits issued pursuant to law, including those issued for manufacture and sale of products;
 - (vi) any right conferred by law or contract including, but not limited to, rights, within the confines of law, to search for or utilize natural resources, and rights to manufacture, use and sell products;
 - (vii) returns which are reinvested.

Paragraph 1(d) is changed to read as follows:

- (d) "own or control" includes ownership or control exercised through subsidiaries or affiliates.

ARTICLE II

Paragraph 2 is changed to read as follows:

2. (a) Each Party shall accord investments in its territory, and associated activities in connection with these investments, of nationals or companies of the other Party treatment no less favorable than that which it accords in like situations to investments and associated activities of its own nationals or companies, or nationals or companies of any third country, whichever is the most favorable. Associated activities in connection with an investment include, but are not limited to:

(i) the establishment, control and maintenance of branches, agencies, offices, factories or other facilities for the conduct of business;

(ii) the organization of companies under applicable laws and regulations; the acquisition of companies or interests in companies or in their property; and the management, control, maintenance, use, enjoyment and expansion, and the sale, liquidation, dissolution or other disposition, of companies organized or acquired;

(iii) the making, performance and enforcement of contracts related to investment;

(iv) the acquisition (whether by purchase, lease or any other legal means), ownerships and disposition (whether by sale, testament or any other legal means) of personal property of all kinds, both tangible and intangible.

(v) the leasing of real property appropriate for the conduct of business;

(vi) the acquisition, maintenance and protection of copyrights, patents, trademarks, trade secrets, trade names, licenses and other approvals of products and manufacturing processes, and other industrial property rights; and,

(vii) the borrowing of funds at market terms and conditions from local financial institutions, as well as the purchase and issuance of equity shares in the local financial markets, and, in accordance with national regulations and practices, the purchase of foreign exchange for the operation of the enterprise.

(b) This Treaty shall also apply to investments by nationals or companies of either Party, made prior to the entering into force of this Treaty and accepted in accordance with the respective prevailing legislation of either Party.

Paragraph 3 is renumbered as paragraphs 3(a) and 3(b) and changed to read as follows:

3. (a) Notwithstanding the preceding provisions of this Article, each Party reserves the right to maintain limited exceptions to the standard of national treatment otherwise required concerning investments or associated activities if exceptions fall within one of the sectors listed in the Annex to this Treaty. Both Parties hereby agree to maintain the number of such exceptions to a minimum. In addition, each Party shall notify the other Party of any specific measures which constitute exceptions to the standard of national treatment provided herein. In no event, however, shall the treatment to be accorded pursuant to any exception be less favorable than that accorded in like situations to investments and associated

activities of nationals or companies of any third country. Moreover, no exception, within the sectors contained in the Annex, introduced after the date of entry into force of this Treaty shall apply to investments of nationals or companies of the other Party existing in that sector at the time the exception becomes effective.

(b) Each Party retains the discretion to approve investments according to national plans and priorities on a nondiscriminatory basis consistent with paragraphs (1) and (3)(a) of this Article.

Paragraph 5(a) is changed to read as follows:

5. (a) Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to reside in the territory of the other Party for the purpose of establishing, developing, directing, administering or advising on the operations of an investment to which they or the companies that employ them have committed or are in the process of committing a substantial amount of capital or other resources.

Paragraph 6 is deleted and paragraphs 7, 8, and 9 are renumbered as paragraphs 6, 7, and 8, respectively.

Paragraph 8 (formerly paragraph 9) is changed to read as follows:

8. Each Party and its subdivisions shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to affect investments in its territory of nationals or companies of the other Party.

ARTICLE III

Paragraph 1 is changed to read as follows:

1. No investment or any part of an investment of a national or company of either Party shall be expropriated or nationalized by the other Party or by a subdivision thereof—or subjected to any other measure, direct or indirect, if the effect of such other measure, or a series of such other measures, would be tantamount to expropriation or nationalization (all expropriations, all nationalizations and all such other measures hereinafter referred to as “expropriation”)—unless the expropriation

- (a) is done for a public purpose;
 - (b) is accomplished under due process of law;
 - (c) is not discriminatory;
 - (d) is accompanied by prompt and adequate compensation, freely realizable; and
 - (e) does not violate any specific contractual engagement.
- Compensation shall be equivalent to the fair market value of the expropriated investment on the date of expropriation. The calculation of such compensation shall not reflect any reduction in such fair market value due to either prior public notice or announcement of the expropriatory action, or the occurrence of the events that constituted or resulted in the expropriatory action. Such compensation shall include payments for delay as may be considered appropriate under international law, and shall be freely transferable at the prevailing rate of exchange for current transactions on the date of the expropriatory action.

Paragraph 2 is changed to read as follows:

2. If either Party or a subdivision thereof expropriates the investment duly incorporated, constituted or otherwise duly organized in its territory, and if nationals or companies of the other Party, directly or indirectly, own, hold or have other rights with respect to the equity of such company, then the Party within whose territory the expropriation occurs shall ensure that such nationals or companies of the other Party receive compensation in accordance with the provisions of the preceding paragraph.

Paragraph 3 is changed to read as follows:

3. Except as otherwise provided in an agreement between the Parties, or between a Party and a national or company of the other Party, a national or company of either Party that asserts that all or part of its investment in the territory of the other Party has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of such other party to determine whether any such expropriation has occurred and, if so, whether any such expropriation, and any compensation thereof, conforms to the principles of international law.

ARTICLE VI

Paragraph 1 is changed to read as follows:

1. The Parties shall, upon the written request of either of them, promptly hold consultations to discuss the interpretation or application of this Treaty or to resolve any disputes in connection therewith.

ARTICLE VII

Paragraph 4 is changed to read as follows:

4. In any proceeding, judicial, arbitral or otherwise, concerning a legal investment dispute between it and a national or company of the other Party, a Party shall not assert, as a defense, counterclaim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whatsoever, whether public or private, including such other Party and its subdivisions, agencies and instrumentalities. Notwithstanding the foregoing, a national or company of the other Party shall not be entitled to compensation for more than the value of its affected assets, taking into account all sources of compensation within the territory of the Party liable for the compensation.

ARTICLE VIII

Paragraph 3(g) is changed to read as follows:

(g) Each Party shall bear the costs of its own arbitrator and counsel in the arbitral proceeding. Expenses incurred by the Chairman and other costs of the proceedings shall be paid for equally by the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties. Such a decision shall be binding.

ARTICLE X

Paragraph 1 is changed to read as follows:

1. This Treaty shall not preclude the application by either Party or any subdivision thereof of any and all measures necessary for the maintenance of public order and morals, the fulfillment of its existing international obligations, the protection of its own security interests, or such measures deemed appropriate by the Parties to fulfill future international obligations.

ARTICLE XI

The paragraph is changed to read as follows:

With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investments of nationals or companies of the Party. Nevertheless, all matters relating to the taxation of nationals or companies of a Party, or their investments in the territories of the other Party or a subdivision thereof shall be excluded from this Treaty, except with regard to measures covered by Article III and the specific provisions of Article V.

PROTOCOL

The Protocol is changed to read as follows:

On signing the Treaty concerning the Reciprocal Encouragement and Protection of Investments, the Arab Republic of Egypt and the United States of America have, in addition, agreed on the following provisions which should be regarded as an integral part of this Treaty:

1. Each Party reserves the right to deny the benefits of this Treaty to any company of either Party, or its affiliates or subsidiaries, if nationals of any third country control such company, affiliate or subsidiary; provided that, whenever one Party concludes that the benefits of this Treaty should not be extended for this reason, it shall promptly consult with the other Party to seek a mutually satisfactory resolution of this matter.

2. "Control" means to have a substantial share of ownership rights and the ability to exercise decisive influence. Differences as to the existence of control shall be resolved according to the provisions of Article VIII.

3. (a) The treatment accorded by the United States to nationals or companies of Egypt under the provisions of Article II(1) and (2) shall in any State of the United States or other territory, possession, or political or administrative subdivision of the United States be the treatment accorded therein to residents of or companies incorporated, constituted or otherwise duly organized in other States of the United States or territories, possessions, or political or administrative subdivisions of the United States.

(b) The treatment accorded by Egypt to nationals and companies of the United States with respect to the establishment and acquisition of investments in limited sensitive geographic areas designated for exclusive Egyptian investment shall be no less favorable than the treatment it accords to investments of nationals and companies of any third country. Egypt reserves the right to modify the areas

covered, provided that such areas will be kept to a minimum and will not substantially impair the investment opportunities of United States nationals and companies.

4. The provisions of Article II, paragraph 3, relating to most favored nation treatment, shall not apply to advantages accorded by either Party to nationals or companies of a third country by virtue of a special security or regional arrangement, including regional customs unions or free trade areas. Further, these provisions do not apply to the ownership of real estate. The provisions of Article II paragraph 1, relating to most favored nation treatment, shall not be construed to oblige one Party to extend to nationals or companies of the other the benefit of any treatment, preference or privilege which may be extended by the former Party by virtue of a customs union or in the field of housing. Moreover, with regard to rights to engage in mining on the public domain, each Party retains the right to accord to nationals or companies of the other Party treatment which is like or similar to that accorded by the other Party to nationals or companies of the first Party.

5. It is understood that this Treaty does not derogate from the rights of either Party regarding the establishment of qualifications as for the practice of professions, including law and accountancy. These qualifications may confine the practice of such professions to nationals or companies of a Party, provided that they are applied on a nondiscriminatory basis; and provided, further, that such nationality requirements do not derogate from the right of nationals and companies of either Party, pursuant to Article II(5)(b) to engage professional and technical personnel of their choice to render professional and technical services necessary for the internal planning and operation of the investment.

6. This Treaty, and in particular, the provisions of Article II, paragraph 5(b) shall be subject to the provisions of Article X.

7. With respect to Article II (6), performance requirements are conditions imposed which would require an investor to export a minimum percentage of final product or to source some inputs locally.

8. With regard to Article III, paragraph 1(d) the term "prompt" does not necessarily mean instantaneous. The intent is that the Party diligently and expeditiously carry out any necessary formalities.

9. With regard to Article III, paragraph 1, the phrase "events that constituted or resulted in the expropriatory action" refers to conduct attributable to the expropriatory Party and not to conduct of the national or company. The inclusion of paragraph (e) in Article III, paragraph 1, is without prejudice to the measure of compensation due in the event of expropriation.

10. The Parties recognize that restrictions on transfers abroad of sales or liquidation proceeds of an investment will adversely affect future capital inflows, contrary to the spirit of this Treaty and the interests of the Party imposing those restrictions. Nevertheless, the Parties recognize that it is possible that the Arab Republic of Egypt may find its foreign exchange reserves at a very low level. In these circumstances, the Arab Republic of Egypt may temporarily delay transfers required under Article V, Paragraph 1(f), but only: (i) in a manner not less favorable than that accorded to comparable

transfers to investors of third countries; (ii) to the extent and for the time period necessary to restore its reserves to a minimally acceptable level, but in no case for period of time longer than that permitted by the provisions of Law 43 in force on the date of signature of this Treaty; and (iii) after providing the investor an opportunity to invest the sales or liquidation proceeds in a manner which will preserve their real value free of exchange risk until transfer occurs.

11. Concerning Article VII (3)(a)(ii), it is understood that the Parties to the dispute may previously agree to submission of the dispute to the jurisdiction of domestic courts and tribunals. The Parties will maintain a nondiscriminatory policy regarding the inclusion and implementation of such provisions in any investment contract.

12. With regard to the Annex, the exceptions noted by the Arab Republic of Egypt under "commercial activity" do not include integrated operations which combine production and sales activities for their products.

13. Recognizing that international financial markets and institutions further stimulate the process of economic development through the international transmission of investment and associated technology, each Party undertakes to maintain a favorable environment for investment by nationals or companies of the other Party in the insurance and banking sectors. Therefore, each Party accords to investments by nationals or companies of the other Party in investment banks, merchant-banks and reinsurance companies whose activities are confined to transactions in foreign currencies treatment no less favorable than that accorded under existing laws and regulations to investments by its own nationals and companies or to investments by nationals or companies of any third country, whichever is the more favorable. Both Parties agree to hold future discussions concerning the expansion of investment possibilities in these sectors by nationals or companies of either Party in the territory of the other Party.

DONE in duplicate at Cairo this 11th day of March 1986 in the English and Arabic languages, both texts being equally authentic.

For the Government of the United States of America:

NICHOLAS A. VELIOTES,
Ambassador.

For the Government of the Arab Republic of Egypt:

Sultan ABOU ALI,
Minister of Economy and Trade.

ARAB REPUBLIC OF EGYPT,
MINISTER OF PLANNING AND INTERNATIONAL COOPERATION,
March 11, 1985.

Hon. WILLIAM E. BROCK,
U.S. Trade Representative,
Washington, D.C.

DEAR MR. AMBASSADOR, As part of the review of the signed Bilateral Investment Treaty prior to its submission for ratification, our two Governments have discussed the question of compensation for expropriation, under Article III. With regard to the issue of com-

pensation, the Government of Egypt understands that in conformity with contemporary international law, compensation pursuant to Article III paragraph 1 shall be determined in a manner consistent with international legal norms and standards rather than norms and standards that are particular to a specific domestic legal system. I would appreciate confirmation that your government shares this understanding.

Sincerely,

Dr. KAMAL AHMED EL GANZOURI,
*Minister of Planning and
International Cooperation.*

THE UNITED STATES TRADE REPRESENTATIVE,
Washington, March 11, 1985.

Dr. KAMAL AHMED EL GANZOURI,
*Minister of Planning and International Cooperation,
Cairo, Egypt.*

DEAR MR. MINISTER: I have the honor to refer to your letter of March 11, 1985, in which you state that: "With regard to the issue of compensation, the Government of Egypt understands that in conformity with contemporary international law, compensation pursuant to Article III paragraph 1 shall be determined in a manner consistent with international legal norms and standards rather than norms and standards that are particular to a specific domestic legal system." The understanding you express conforms to the understanding of the Government of the United States regarding the determination of the amount of compensation due to an investor pursuant to Article III of the Bilateral Investment Treaty.

Very truly yours,

WILLIAM E. BROCK.

I certify this to be a true copy of the original.

EDWARD ROZYSKI.

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INVESTMENT TREATY WITH GRENADA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND
GRENADA CONCERNING THE RECIPROCAL ENCOURAGEMENT
AND PROTECTION OF INVESTMENT, SIGNED AT WASHINGTON
ON MAY 2, 1986



JUNE 3, 1986.—Treaty was read the first time, and together with the
accompanying papers, referred to the Committee on Foreign Relations
and ordered to be printed for use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1986

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, June 3, 1986.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and Grenada concerning the Reciprocal Encouragement and Protection of Investment, signed at Washington on May 2, 1986. I transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

The Bilateral Investment Treaty (BIT) program, initiated in 1981, is designed to encourage and protect U.S. investment in developing countries. The treaty is an integral part of U.S. efforts to encourage Grenada and other governments to adopt macroeconomic and structural policies that will promote economic growth. It is also fully consistent with U.S. policy toward international investment. That policy holds that an open international investment system in which participants respond to market forces provides the best and most efficient mechanism to promote global economic development. A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the parties also agree to international law standards for expropriation and compensation; free financial transfers; and procedures, including international arbitration, for the settlement of investment disputes.

I recommend that the Senate consider this treaty as soon as possible and give its advice and consent to ratification of the treaty at an early date.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 20, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the treaty between the United States of America and Grenada concerning the Reciprocal Encouragement and Protection of Investment, signed at Washington, May 2, 1986. Agreement on this treaty was reached under the bilateral investment treaty (BIT) program which you initiated in 1981. Development of the BIT program and the negotiations of the individual treaties have been pursued by the Office of the United States Trade Representative and the Department of State with active participation of the Departments of Commerce and Treasury, in conjunction with other interested U.S. Government agencies. On March 25 of this year, the first six BITs—with Haiti, Morocco, Panama, Senegal, Turkey, and Zaire—were submitted to the Senate for its advice and consent to ratification. Additional BITs, with Bangladesh, Cameroon and Egypt, have been signed. I recommend that this treaty be transmitted to the Senate for its advice and consent to ratification.

In 1981 you initiated the global BIT program to encourage and protect U.S. investment in developing countries. By providing certain mutual guarantees and protections, a BIT creates a more stable and predictable legal framework for foreign investors in the territory of each of the treaty Parties. The negotiation of a series of bilateral treaties with interested countries establishes greater international discipline in the investment area.

The BITs which have been signed as well as others under negotiation are an integral part of U.S. efforts to encourage other governments to adopt macroeconomic and structural policies that will promote economic growth. They are also fully consistent with your policy statement on international investment of September 9, 1983, which states that international direct investment flows should be determined by private market forces and should receive fair, equitable and non-discriminatory treatment.

Our experience to date has shown that interested countries are willing to provide U.S. investors with significant investment guarantees and assurances as a way of including additional foreign investment. It is U.S. policy to advise potential treaty partners that conclusion of a BIT with the United States is an important and favorable factor in the investment relationship, but does not in and of itself result in immediate increases in U.S. investment flows.

Congressional support for the BIT program is reflected in Section 601(a) and (b) of the Foreign Assistance Act, as amended, in particular at Section 601(b) which provides:

In order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this Act, the President shall . . . (3) accelerate a program of negotiating treaties for commerce and trade, including tax treaties, which shall include provisions to encourage and facilitate the flow of private investment to, and its equitable investment in, friendly countries and areas participating in programs under this Act.

BITs are consistent in purpose with the network of treaties of Friendship, Commerce and Navigation (FCNs) which the United States negotiated from the early years of the Republic until the last successful negotiations with Thailand and Togo in the late 1960s. They continue the U.S. policy of securing by agreement standards of equitable treatment and protection of U.S. citizens carrying on business abroad, and institutionalizing processes for the settlement of disputes between investors and host countries, and between governments. We expect that a series of bilateral treaties with interested countries will establish greater international discipline in the investment area.

The BIT was designed to protect investment not only by treaty but also by reinforcing traditional international legal principles and practice regarding foreign direct private investment. In pursuit of this objective, the model BIT adopts FCN language and concepts. Traditional FCN provisions granting rights which are not important to the typical U.S. investor were eliminated and replaced with more specific language concerning investment protection. Perhaps most significantly, the BIT goes beyond the traditional FCN to provide investor-host country arbitration in instances where an investment dispute arises.

Our BIT approach followed similar programs that had been undertaken with considerable success by a number of European countries, including the Federal Republic of Germany and the United Kingdom, since the early 1960s. Indeed, our industrialized partners already have nearly two hundred BITs in force, primarily with developing countries. Our treaties, which draw upon language used in the U.S. FCN treaties as well as European counterparts, are more comprehensive and far-reaching than European BITs.

THE U.S.-GRENADA TREATY

The treaty with Grenada satisfies all four main BIT objectives:—foreign investors are to be accorded treatment in accordance with international law and are to be treated no less favorably than investors of the host country or no less favorably than investors of third countries, whichever is the most favorable treatment ("national" or "most-favored-nation" treatment) subject to certain specified exceptions;

- international law standards shall apply to the expropriation of investments and to the payment of compensation for expropriation;
- free transfers shall be afforded to funds associated with an investment into and out of the host country; and
- procedures are to be established which allow an investor to take a dispute with a Party directly to binding third-party arbitration.

The provisions on treatment of foreign investment and arbitration, and in particular Grenada's acceptance of international law as the governing law, mark an important achievement for the BIT program and our investment and international arbitration policies.

A technical memorandum explaining in detail the provisions of this treaty will be transmitted separately to the Senate Committee on Foreign Relations. That technical memorandum explains, clause by clause, the provisions of the treaty with Grenada.

The provisions of the treaty with Grenada do not differ in any respect from the U.S. model text. The language adopted is identical to that contained in the current U.S. model text, the most significant provisions of which are as follows.

The model BIT's definition section clarifies terms such as "company of a Party" and "investment." The BIT concept of "investment" is broad and designed to be flexible; although numerous types of economic interests are enumerated, the intent is to include all legitimate interests in the territory of either Party, whether directly or indirectly controlled by nationals of the other, having economic value or "associated" with an investment. Protected "companies of a Party" are those incorporated or otherwise organized under the laws of a Party in which nationals of that Party have a substantial interest.

The model BIT accords the better of national or most/favored-nation (MFN) treatment to foreign investment, subject to each Party's exceptions which are listed in a separate Annex. The exceptions are designed to protect state regulatory interests and for the United States to accommodate the derogations from national treatment in state or federal law relating to such areas as air transport, shipping, banking, telecommunications, energy and power production, insurance, and from national and MFN treatment in the case of ownership of real property. Grenada has listed the following sectors or matters as exceptions: air transportation, government grants, government insurance and loan programs, ownership of real estate, use of land and natural resources. Any additional restrictions or limitations which a Party may adopt with respect to those matters or sectors excepted from the standards are not to affect existing investments. The BIT also includes general treatment protections designed to be a guide to interpretation and application of the treaty. Thus, the Parties agree to accord investments "fair and equitable treatment" and "full protection and security" in no case "less than that required by international law." It specifically grants nationals of a Party the right to establish investments in the territory of the other Party, restricts the right to impose performance requirements, and obliges Parties to observe their contractual obligations with investors. The U.S. model also provides that companies legally constituted under the laws of the other

Party (i.e., subsidiaries of companies of a Party) with investments in that country shall be permitted to engage "top managerial personnel of their choice, regardless of nationality."

The model BIT also confers protection from unlawful interference with property interests and assures compensation in accordance with international law standards. It provides that any direct or indirect taking must be: for a public purpose; nondiscriminatory; accompanied by the payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general standards of treatment discussed above. The meaning of "expropriation" as used in the model BIT is broad and flexible; it includes any measure which is "tantamount to expropriation or nationalization." Such compensation, which "shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known," must be "without delay," "fully realizable," "freely transferable" and "include interest at a commercially reasonable rate from the date of expropriation" The BIT grants the right to "prompt review" by the relevant judicial or administrative authorities in order to determine whether the compensation offered is consistent with these principles. It also extends national and MFN treatment to investors in cases of loss due to war or other civil disturbance. The BIT does not provide, however, a specific valuation method for compensating such losses.

The model BIT provides for free transfers "related to an investment," specifically of returns, compensation for expropriation, payments arising out of an investment dispute, contract payments, proceeds from sale, and contributions to capital for maintenance or development of an investment. Such transfers are to be made in a "freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred." The model text recognizes that notwithstanding this guarantee Parties can maintain certain laws and regulations regarding transfers provided these are applied in a non-discriminatory fashion. In particular, the model text provides that Parties can require reports of currency transfers and impose income taxes by such means as a withholding tax on dividends. The model text also recognizes that Parties retain the right to protect the rights of creditors and ensure the satisfaction of judgments in adjudicatory proceedings.

The model BIT provides that where certain defined investment disputes arise between a Party and a national or company of the other Party, including disputes as to the interpretation of an investment agreement, and the dispute cannot be solved through negotiation, it may be submitted to arbitration in accordance with any dispute-settlement procedures to which the national or company and the host country have previously agreed. Unless the national or company has submitted the dispute to previously agreed dispute settlement procedures or to adjudication by domestic courts or other tribunals of the host country, the national or company may submit the dispute to the International Centre for the Settlement of Investment Disputes ("ICSID") for conciliation or binding arbitration. If ICSID is unavailable, the dispute may be submitted under the rules of ICSID's additional facility. Exhaustion of local

remedies is not required. In a separate provision, the BIT Parties also agree to provide effective means of asserting claims and enforcing rights with respect to investments.

The model BIT provides for state-to-state arbitration between the Parties in case of a dispute regarding the interpretation or application of the treaty. In the absence of an agreement that other rules apply, the BIT refers the Parties to specific procedural rules which must govern the arbitration. The BIT also outlines the procedures for the creation of the arbitral panel.

The model BIT exhorts Parties to apply their tax policies fairly and equitably. Because the United States specifically addresses tax matters in tax treaties, the BIT generally excludes such matters. Another BIT provision exempts disputes arising under Export-Import Bank programs, or other credit guarantee or insurance arrangements providing for alternative dispute settlement arrangements, from the standard BIT arbitration clauses. The model BIT also states that the treaty shall not derogate from any obligations that require more favorable treatment of investments and declares that the treaty shall not preclude measures necessary for public order or essential security interests. The model BIT enters into force 30 days after exchange of ratifications and continues in force for at least ten years. Thereafter, either Party may terminate the treaty, subject to one year's written notice.

Each of these model provisions was developed after lengthy and extensive consultations within the U.S. Government and with the private sector. While the U.S. model text has recently been simplified, the provisions summarized above have all been retained. The text of the treaty with Grenada is identical to that contained in the current model text.

Submission of this treaty marks a significant development in our international investment policy. I join with the United States Trade Representative and other U.S. Government agencies in supporting the treaty and favor its transmission to the Senate at an early date.

Respectfully submitted.

GEORGE P. SHULTZ.

**TREATY BETWEEN THE UNITED STATES OF AMERICA AND GRENADA
CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION
OF INVESTMENT**

The United States of America and Grenada,

Desiring to promote greater economic cooperations between them, particularly with respect to investment by nationals and companies of one Party in the territory of the other Party; and

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties,

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources, and

Having resolved to conclude a treaty concerning the encouragement and reciprocal protection of investment,

Have agreed as follows:

ARTICLE I

1. For the purposes of this Treaty,

(a) "company of a Party" means any kind of corporation, company, association, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned;

(b) "investment" means every kind of investment in the territory of one Party owned or controlled, directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value, and associated with an investment;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill; and

(v) any right conferred by law or contract, and any licenses and permits pursuant to law;

(c) "national" of a Party means a natural person who is a national of a Party under its applicable law;

(d) "return" means an amount derived from or associated with an investment, including profit; dividend; interest; capital gain; royalty payment; management, technical assistance or other fee; or returns in kind;

(e) "associated activities" include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.

2. Each Party reserves the right to deny to any company the advantages of this Treaty if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.

3. Any alteration of the form in which assets are invested or re-invested shall not affect their character as investment.

ARTICLE II

1. Each Party shall permit and treat investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the most favorable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Annex, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall not be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country, except with respect to ownership of real property. Rights to engage in mining on the public domain shall be dependent on reciprocity.

2. Investments shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. Each Party shall observe any obligation it may have entered into with regard to investments.

3. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an invest-

ment to which they, or a company of the first Party, that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

4. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personal of their choice, regardless of nationality.

5. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

6. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties.

7. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.

8. The treatment accorded by the United States of America to investments and associated activities under the provisions of this Article shall in any State, Territory or possession of the United States of America be the treatment accorded therein to companies legally constituted under the laws and regulations of other States, Territories or possessions of the United States of America.

ARTICLE III

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II(2). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known; include interest at a commercially reasonable rate from the date of expropriation; be paid without delay; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.

2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefor, conforms to the principles of international law.

3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or compa-

nies of any third country, whichever is the most favorable treatment, as regards any measures it adopts in relation to such losses.

ARTICLE IV

1. Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include: (a) returns; (b) compensation pursuant to Article III; (c) payments arising out of an investment dispute; (d) payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement; (e) proceeds from the sale or liquidation of all or any part of an investment; and (f) additional contributions to capital for the maintenance or development of an investment.

2. Except as provided in Article III paragraph 1, transfers shall be made in a freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations; (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE V

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty.

ARTICLE VI

1. For purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; (b) the interpretation or application of any investment authorization granted by a Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation, which may include the use of non-binding, third-party procedures. If the dispute cannot be resolved through consultation and negotiation, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute-settlement procedures. Any dispute-settlement procedures regarding expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and

applicable international agreements regarding enforcement of arbitral awards.

3. (a) The national or company concerned may choose to consent in writing to the submission of the dispute to the International Centre for the Settlement of Investment Disputes ("Centre") or under the rules of the Additional Facility of the Centre ("Additional Facility"), for settlement by conciliation or binding arbitration, at any time after six months from the date upon which the dispute arose. Once the national or company concerned has so consented, either party to the dispute may institute proceedings before the Centre or the Additional Facility provided:

(i) the dispute has not been submitted by the national or company for resolution in accordance with any applicable previously agreed dispute settlement procedures; and

(ii) the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a party to the dispute.

If the parties disagree over whether conciliation or binding arbitration is the more appropriate procedure to be employed, the opinion of the national or company concerned shall prevail.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration, or, in the event the Centre is not available, to the submission of the dispute to ad hoc arbitration in accordance with the rules and procedures of the Centre.

(c) Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States done at Washington March 18, 1965 ("Convention") and the Regulations and Rules of the Centre or, if the Convention should for any reason be inapplicable the Rules of the Additional Facility shall govern.

4. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counter-claim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

5. For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall, in accordance with Article 25 (2)(b) of the Convention, be treated as a national or company of such other Party.

ARTICLE VII

1. Any dispute between the Parties concerning the interpretation or application of this Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the

absence of an agreement by the Parties to the contrary, the Model Rules on Arbitral Procedure adopted by the United Nations International Law Commission in 1958 as referred to in U.N. General Assembly Resolution 1262 (XIII) shall govern.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the Tribunal shall render its decision within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

4. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceeding shall be paid for equally by the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

ARTICLE VIII

The provisions of Article VI and VII shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX

This Treaty shall not derogate from:

(a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party;

(b) international legal obligations; or

(c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

ARTICLE X

1. This Treaty shall not preclude the application by either Party of measures necessary in its jurisdiction for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XI

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

2. Nevertheless, the provisions of this Treaty, and in particular Articles VI and VII, shall apply to matters of taxation only with respect to the following:

- (a) expropriation, pursuant to Article III;
- (b) transfers, pursuant to Article IV; or
- (c) the observance and enforcement of terms of an investment agreement or authorization as referred to in Article VI (1)(a) or (b),

to the extent they are not subject to the dispute settlement provisions of a convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

ARTICLE XII

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 3 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten year period or at any time thereafter.

3. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.

DONE in duplicate at Washington on the Second day of May 1986 in the English language.

For the Government of the
United States of America:

CLAYTON YEUTTER.

For the Government of Grenada:

HERBERT BLAIZE.

ANNEX

Consistent with Article II paragraph 1, each Party reserves the right to maintain limited exceptions in the sectors or matters it has indicated below:

THE UNITED STATES OF AMERICA

Air transportation; ocean and coastal shipping; banking; insurance; government grants; government insurance and loan programs; energy and power production; custom house brokers; ownership of real estate; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provision of

common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources.

GRENADA

Air transportation; government grants; government insurance and loan programs; ownership of real estate; use of land and natural resources.

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